

FILE COPY

Office - Supreme Court, U. S.

FILED

MAR 15 1948

CHARLES ELMORE BROPLEY  
CLERK

No. 509

IN THE  
SUPREME COURT OF THE UNITED STATES  
OF AMERICA  
(October Term 1947)

HARRY R. RANDALL, *Petitioner*

*vs.*

UNITED STATES OF AMERICA, *Respondent*

MOTION FOR LEAVE TO FILE SUPPLEMENTAL  
PETITION FOR WRIT OF CERTIORARI TO THE  
CIRCUIT COURT OF APPEALS FOR THE  
SEVENTH CIRCUIT AND SUPPLEMEN-  
TAL PETITION AND SUPPORTING  
BRIEF

MARVIN B. SIMPSON, SR.  
Fort Worth National Bank Building  
Fort Worth, Texas

LEM BILLINGSLEY  
First National Bank Building  
Fort Worth, Texas

MACK TAYLOR  
711 Fort Worth National Bank Bldg.  
Fort Worth 2, Texas

*Attorneys for Petitioner*



## INDEX

	Page
Motion for leave to file supplemental petition.....	1- 2
Petition (Supplemental) .....	3
Summary statement of matters involved.....	3
Additional statement of matters involved.....	3- 6
Appendix A .....	13-35
Appendix B .....	36-39
Jurisdiction .....	7
Questions Involved .....	7
Specification of Errors.....	7
Laws involved .....	8
Additional Reasons for Allowance of Writ:	
1. The fact that Judge Lindley as a district judge had tried and decided the question of whether or not Sterling J. Perry was guilty of the offenses alleged in the overt acts necessary in order to give life to the alleged conspiracy charged against Harry R. Randall disqualified him, Judge Lindley, from sitting on the trial and hearing of such questions in the circuit court of appeals	9-10
2. The proper remedy where a district judge sat on a case on an appeal and the same question had been theretofore decided by him, although in a different case, is certiorari.....	10-11
Conclusion and Prayer .....	12

## TABLE OF CASES CITED

	Page
Wm. Cramp & Sons Ship & Engine Building Company vs. International Curties et al., 228 U. S. 645; 57 L. ed 1003	11
Rexford vs. Brunswick-Balke-Collender Co., 228 U. S. 339; 57 L. ed. 864.....	9

## OTHER LAWS CITED

Section 256, Judicial Code, 28 USCA 37a.....	7- 8
Section 120, Judicial Code, 28 USCA 216.....	7- 8
Section 88, Title 18, USCA.....	8-11-12
Section 221-225 and 264, Title 12, USCA.....	8

No. 509

IN THE

# SUPREME COURT OF THE UNITED STATES

OF AMERICA

(October Term 1947)

---

HARRY R. RANDALL, *Petitioner*

*vs.*

UNITED STATES OF AMERICA, *Respondent*

---

MOTION FOR LEAVE TO FILE SUPPLEMENTAL  
PETITION FOR WRIT OF CERTIORARI TO THE  
CIRCUIT COURT OF APPEALS FOR THE  
SEVENTH CIRCUIT AND SUPPLEMEN-  
TAL PETITION AND SUPORTING  
BRIEF

---

*To The Honorable Chief Justice, and the Honorable  
Associate Justices of The Supreme Court of the  
United States of America:*

At this time comes the petitioner Harry R. Randall and respectfully asks leave of the court to file an additional or supplemental petition for writ of certiorari in addition to and supplementing his petition filed herein in this cause, and in support thereof he says that illness on the part of his counsel made it impossible for counsel coming into the case to properly prepare his original petition herein, and that in order that justice may be done he respectfully asks the court to permit him to file the petition and supporting brief hereto attached.

Wherefore he prays the court to enter a proper order admitting such supplemental petition and brief to be filed and considered in connection with such original petition.

MARVIN B. SIMPSON, SR.,  
LEM BILLINGSLEY,  
MACK TAYLOR,

*Attorneys for Petitioner.*

No. 509

In The

SUPREME COURT OF THE UNITED STATES  
OF AMERICA

(October Term 1947)

---

HARRY R. RANDALL, *Petitioner*

*vs.*

UNITED STATES OF AMERICA, *Respondent*

---

SUPPLEMENTAL AND AMENDED PETITION  
FOR WRIT OF CERTIORARI TO THE CIR-  
CUIT COURT OF APPEALS FOR  
THE SEVENTH CIRCUIT

---

*To The Honorable Chief Justice, and the Honorable  
Associate Justices of The Supreme Court of the  
United States of America:*

**A. SUMMARY STATEMENT OF MATTERS  
INVOLVED**

(Reference is here made to summary state-  
ment contained on pages 1, 2 and 3 of petition  
for Writ of Certiorari.)

**B. ADDITIONAL STATEMENT OF MATTERS  
INVOLVED**

In Overt Act No. VII of the indictment it was  
charged that Sterling J. Perry misapplied One

Thousand Dollars (\$1,000.00) of the moneys, funds and credits of said bank (meaning the National City Bank of Evansville, Ind. (R. 5.)

In Overt Act No. IX it was charged that Sterling J. Perry, director, agent, and employee of The National City Bank of Evansville, unlawfully misapplied One Hundred Dollars (\$100.00) of the moneys, funds, and credits of said bank. (R. 5.)

In Overt Act XI it was charged that on or about the third day of April, 1944, at Evansville, Vanderburgh County, Indiana, Sterling J. Perry, director, officer, agent, and employee of The National City Bank of Evansville, unlawfully misapplied One Thousand Dollars (\$1,000.00) of the moneys, funds, and credits, of said bank. (R. 5.)

The indictment further alleges in Overt Act No. XIII that on or about the 26th day of May, 1944, at Evansville, Vanderburgh County, Indiana, Sterling J. Perry unlawfully misapplied One Hundred Sixteen Dollars and Fifty-three Cents (\$116.53) of the moneys, funds and credits of said bank. (R. 6.)

The indictment further alleges in Overt Act XV that on or about the 15th day of August, 1944, at Evansville, Vanderburgh County, Indiana, Sterling J. Perry, director, agent, and employee of the National City Bank of Evansville, unlawfully misapplied One Hundred Twenty-five (\$125.00) Dollars of the moneys, funds and credits of said bank. (R. 6.)



That said indictment further charges in Overt Act XVII that on or about the 23rd day of August, 1944, at Evansville, Vanderburgh County, Indiana, Sterling J. Perry, director, officer, agent and employee of The National City Bank of Evansville, unlawfully misapplied Five Hundred Dollars (\$500.00). (R. 7.)

In said indictment it was charged in Overt Act XIX (R. 7) and in Overt Act XXI (R. 8) and in Overt Act XXIII (R. 8) and in Overt Act XXV (R. 9) and in Overt Act XXVII (R. 9) and in Overt Act XXIX (R. 10) that Sterling J. Perry, a director, officer, and agent of said bank, misapplied funds and credits of said bank.

In said indictment and in Overt Act XXXI it was charged that Sterling J. Perry made false entries to deceive the officers of said bank. (R. 10.)

In said indictment in Overt Act XXXII it was charged that Sterling J. Perry, officer, agent and employee of The National City Bank of Evansville, with intent to injure said bank and the Hercules Body Company unlawfully, knowingly, wilfully, and feloniously misapplied sixty-three thousand, five hundred four dollars and sixty-two cents (\$63,504.62) of the moneys, funds, and credits of said bank, by then and there crediting to the defendant, Harry R. Randall, the proceeds of a check. (R. 11.)

In said indictment in Overt Act XXXIII it was charged that Sterling J. Perry, a director, officer, agent and employee of The National City

Bank of Evansville, \* \* \* misapplied Twelve Thousand, Five Hundred Dollars (\$12,500.00) of the moneys and credits of said bank. (R. 11.)

In said indictment in Overt Act XXXIV it was charged that Sterling J. Perry, a director, officer and employee of The National City Bank of Evansville, with intent to injure and defraud said bank \* \* \* misapplied Twenty-nine Thousand Two Hundred Twenty Dollars and Fifty-two Cents (\$29,220.52) of the moneys and credits of said bank. (R. 11-12.)

The Defendant, Harry R. Randall was arraigned and entered a plea of Not Guilty to the indictment (R. 18).

The Defendant was convicted and appealed to the Circuit Court of Appeals for the Seventh Circuit, where the case was heard before Chief Justice SPARKS, Associate Justice KERNER, and District Judge LINDLEY, the case was affirmed. Opinion by KERNER, Circuit Judge, Chief Justice SPARKS dissenting.

For the substantive offense involved in this transaction Sterling J. Perry was indicted in the Southern District of Indiana, tried and convicted and sentenced by JUDGE LINDLEY. (See certified Copy of Indictment and Judgment—Appendix A and B.)

Count II charged that Harry R. Randall aided and abetted Sterling J. Perry in all the offenses charged against Sterling J. Perry in an indictment in the Southern District of Indiana under criminal number 8575. (R. 12.)

## **JURISDICTION**

The jurisdiction of this court is invoked under Judicial Code, Section 256, as amended (28 U. S. C. A. 37a) and Judicial Code, Section 120, as amended (28 U. S. C. A. 216). The judgment of the Court of Civil Appeals was entered November 3, 1947 (R. 347). Rehearing was Denied December 8, 1947 (R. 361).

## **QUESTIONS INVOLVED**

(In addition to the questions set forth in the original petition for writ of certiorari the following questions are presented.)

- I. Where a District Judge in the same district as a trial court has decided a question involved in the appeal, although in a different cause, he is disqualified from sitting at the trial or hearing of the appeal.**

## **SPECIFICATION OF ERROR**

The Circuit Court of Appeals committed an error in permitting the Honorable WALTER J. LINDLEY, a District Judge who had decided the identical question in another case to sit in judgment on the appeal of the case at bar.

The Circuit Court of Appeals erred in permitting Judge LINDLEY to participate in the appeal of the case against Harry R. Randall, charged with conspiracy to violate the banking Act; and also charging in the overt acts that Sterling J. Perry had violated the banking act as a part of such conspiracy, because Judge LINDLEY had theretofore tried and decided

the identical questions involved in the appeal, although in a different case, in violation of section 120 of the Judicial Code. (Title 18, sec. 216, U. S. C. A.)

### **LAWS INVOLVED**

Section 88, Title 18, U. S. C. A. (Section 37 of the Criminal Code) and Sections 221-225 and Section 264, Title 12, U. S. C. A.; and Section 120 of the Judicial Code (Title 28, Section 216 of U. S. C. A.).

### **ADDITIONAL REASONS RELIED ON FOR ALLOWANCE OF WRIT**

1. The fact that Judge LINDLEY as a District Judge had tried and decided the question of whether or not Sterling J. Perry was guilty of the offenses alleged in the overt acts necessary in order to give life to this alleged conspiracy charged against Harry R. Randall disqualified him, Judge LINDLEY, from sitting on the trial or hearing of such question in the circuit court of appeals.

The United States not only alleged the various offenses charged in the overt acts but proceeded to prove them by testimony; all of the charges in the indictment, including the overt acts, were put in issue when the defendant Randall entered a plea of *Not Guilty* and proof of one or more overt acts is necessary.

Whether or not the defendant Randall was guilty of the offense charged in the indictment was the question before the Circuit Court of Appeals; indeed the Circuit Court of Appeals itself says "That the question is whether or not the verdict is supported by any

substantial evidence, direct or circumstantial." (R. 349.)

Again we direct the attention of the court to the language used by the Circuit Court of Appeals in the Randall case (page 349 of the Record) and we quote:

"There is no dispute concerning the fact that Perry embezzled and misapplied the funds of the bank, nor is there any dispute that at least \$16,335.98 of his shortage of the bank's funds was misapplied by Perry to Randall's no-fund checks."

The embezzlement of the witness Perry was of course disputed by the defendant Randall's *plea of Not Guilty*. And since Judge LINDLEY had already decided the question of the guilt of Perry in the trial of his, Perry's case, then it naturally follows that under the provisions of Section 120 of the Judicial Code that he, Judge LINDLEY, would be disqualified from sitting on a hearing involving that same question in the Circuit Court of Appeals.

We respectfully direct the court's attention to the holding in *Rexford vs. Brunswick-Balke-Collender Co.*, 228 U. S. 339, 57 L. ed. 864, and we quote:

"It is the manifest purpose to require that Circuit Court of Appeals be composed in every hearing of judges none of whom will be in the attitude of passing upon the propriety, scope or effect of any ruling of his own made in the progress of the cause in the court of first instance, and to this end the disqualification is made to arise, not only when the judge has tried or heard the whole

cause in the court below, *but also when he has heard or tried any question therein which it is the duty of the Circuit Court of Appeals to consider and pass upon.*"

The Circuit Court of Appeals insists that it is its duty in this case to determine whether or not there was evidence to support the jury's finding. Finding of what? That the defendant Randall was guilty as *charged in the indictment*. The defendant, Randall, was charged with having conspired with Sterling J. Perry to abstract money from the National City Bank of Evansville. In order to so find under the indictment as pleaded the jury had to find that Perry had committed the abstractions alleged in the indictment. This question was in issue before the Circuit Court of Appeals in the Randall case before Judge LINDLEY, it was likewise before the trial court in the Perry case, before Judge LINDLEY.

**2. The proper remedy where a District Judge sat on a case on an appeal and the same question had been theretofore decided by him, although in a different case, is certiorari.**

Sterling J. Perry testified "I am the same Sterling J. Perry who was indicted and pleaded guilty to an indictment returned in this court on June 24, 1946, under No. 8575 Criminal, charging a number of violations in connection with my work in the National City Bank of Evansville." (R. 124.)

The indictment in cause No. 8575 Criminal involved the identical defalcations alleged as overt acts of indictment in the present case. Judge LINDLEY sat

on the trial of the case against Sterling J. Perry in cause No. 8575 Criminal, Judge LINDLEY sat as an appellate Judge in the present case. (See indictment Case No. 8575 Criminal, Certified copy of Judgment in Case No. 8575 Criminal.)

In the case of *Wm. Cramp & Sons Ship and Engine Building Company vs. International Curtis et al*, 228 U. S. 645; 57 L. ed. 1003, it was held in substance: That certiorari will issue from the Supreme Court to the Circuit Court of Appeals where a judge who heard and disposed of the case in the first instance also sat in the court of appeals.

This is even true where no objection to the sitting of such Judge was made in the court below. The court will appreciate the difficulty arising with respect to making objections to a District Judge sitting on the case on appeal as counsel for the Defendant-Appellant would hardly have first hand information as to the personnel of the Circuit Court sitting in judgment on his appeal.

While it is not here contended that Judge LINDLEY sat on the trial of the Randall case in the first instance, it is however the position of the petitioner that he was disqualified from sitting on appeal in the Randall case for the reason that identical questions had theretofore been decided by Judge LINDLEY not only questions of law, but also questions of fact as well.

The applicable portion of Section 120 of the Judicial Code reads as follows:



"No judge before whom a cause or *question* may have been *tried or heard* in a *district court*, or existing circuit court, shall sit on *trial or hearing* of such cause or *question* in the circuit court of appeals." (Italics ours.)

Therefore since Judge LINDLEY had decided the question of fact in the *Perry case* which was identical with that of the *Randall case*, it is our belief that this petition for certiorari should be granted, because of his evident disqualification.

### CONCLUSION AND PRAYER

For the foregoing reasons as well as the reasons set forth in his original petition for a writ of certiorari filed herein, the petitioner by his solicitor, respectfully prays, that a Writ of Certiorari issue to the Circuit Court of Appeals for the Seventh Circuit, to the end that this cause may be reviewed and determined by this court and the judgment of the Circuit Court of Appeals reversed.

Respectfully submitted,

MARVIN B. SIMPSON, SR.,  
Fort Worth National Building  
Fort Worth, Texas

LEM BILLINGSLEY  
First National Bank Building  
Fort Worth, Texas

MACK TAYLOR  
711 Fort Worth National Building  
Fort Worth, Texas

*Attorneys for Petitioner.*



## APPENDIX A

United States of America,	} ss.
Southern District of Indiana	

IN THE

DISTRICT COURT OF THE UNITED STATES

For the Southern District of Indiana

Indianapolis Division

May Term, 1946

UNITED STATES OF AMERICA	} No. 8575
vs.	
STERLING J. PERRY	

Criminal

The Grand Jurors of the United States, within and for the Southern District of Indiana, impaneled, sworn, and charged in said Court at the term and division aforesaid, to inquire for the United States for the Southern District of Indiana, upon their oaths charge and present that:

STERLING J. PERRY,

late of said district, at and in the Evansville Division thereof, was on or about the 25th day of March, 1946, and for a long time prior thereto had been, an officer, to wit, vice-president, of The National City Bank of Evansville, a national bank theretofore organized and then existing and doing a banking business at Evansville, in Vanderburgh County, in the State of Indiana, under and pursuant to the laws of the United States, said bank being then and there a member bank of the Federal Reserve Bank of St. Louis, Missouri, Federal

Reserve District No. 8, the deposits of which member bank were then and there insured in accordance with the provisions of law, by with, and in the Federal Deposit Insurance Corporation, a corporation theretofore organized and then existing and doing business under and pursuant to the laws of the United States of America, and in which said corporation the United States of America then and there owned a part of the capital stock; that on or about said 25th day of March, 1946, the said Sterling J. Perry, while then and there acting in his aforesaid capacity as vice-president of said member bank, without authority of the Board of Directors of said member bank and with intent to injure and defraud said member bank, other companies, bodies politic, bodies corporate, and individual persons, the names of all of whom are to the Grand Jurors unknown, and with further intent to deceive the officers of said member bank, the Comptroller of the Currency, and any and all agents and examiners appointed to examine the affairs of said member bank, and also the Federal Reserve Board and said Federal Deposit Insurance Corporation, did then and there within the jurisdiction of this Court unlawfully, knowingly, wilfully, and feloniously and without authority from the Board of Directors of said member bank, misapply certain of the moneys, funds, and credits of said member bank in the amount of one hundred thousand dollars (\$100,000.00) and of that value, a more particular description of said moneys, funds, and credits being to the Grand Jurors unknown, all with the intent on the part of said defendant to convert said moneys, funds, and credits to his own use and to the

use of other persons, companies, and corporations, the names and descriptions of all of which are to the Grand Jurors unknown, in the following manner and by the following means: said defendant, in his aforesaid capacity, did then and there apply said one hundred thousand dollars (\$100,000.00) received by him from the sale of securities entrusted to his care by William Shear, a customer of said bank, to take up cash items in a like amount, which cash items had previously been accumulated and held by him in said bank, a more particular description of which cash items is to the Grand Jurors unknown.

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

## COUNT II

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present that:

### STERLING J. PERRY,

late of said district, at and in the Evansville Division thereof, was on the 30th day of January, 1946, and for a long time prior thereto had been, an officer, to wit, vice-president, of The National City Bank of Evansville, a national bank theretofore organized and then existing and doing a banking business at Evansville, in Vanderburgh County in the State of Indiana, under and pursuant to the laws of the United States, said bank being then and there a member bank of the Federal Reserve Bank of St. Louis, Missouri, Federal Reserve District No. 8, the deposits

of which member bank were then and there insured in accordance with the provisions of law by, with, and in the Federal Deposit Insurance Corporation, a corporation theretofore organized and then existing and doing business under and pursuant to the laws of the United States of America, and in which said corporation the United States of America then and there owned a part of the capital stock; that on or about said 30th day of January, 1946, the said Sterling J. Perry, while then and there acting in his aforesaid capacity as vice-president of said member bank, through the power, control, direction, and management which he had and possessed as such vice-president over the moneys, funds and credits of said member bank, did then and there within the jurisdiction of this Court unlawfully, knowingly, wilfully, feloniously, and with the intent to injure and defraud said member bank and other companies, bodies politic, bodies corporate, and individual persons, the names of all of whom are to the Grand Jurors unknown, embezzle and appropriate to his own use from said member bank certain of the moneys, funds, and credits of said member bank of the value of one thousand two hundred forty-seven dollars and thirty-one cents (\$1,247.31), a more particular description of which said moneys, funds, and credits is to the Grand Jurors unknown, which said moneys, funds, and credits had theretofore come into his possession and under his control by virtue of his aforesaid position with and in said member bank.

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

## COUNT III

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present that:

## STERLING J. PERRY,

late of said district, at and in the Evansville Division thereof, was on the 30th day of January, 1946, and for a long time prior thereto had been, an officer, to wit, vice-president, of The National City Bank of Evansville, a national bank theretofore organized and then existing and doing a banking business at Evansville, in Vanderburgh County, in the State of Indiana, under and pursuant to the laws of the United States, said bank being then and there a member bank of the Federal Reserve Bank of St. Louis, Missouri, Federal Reserve District No. 8, the deposits of which member bank were then and there insured in accordance with the provisions of law by, with, and in the Federal Deposit Insurance Corporation, a corporation theretofore organized and then existing and doing business under and pursuant to the laws of the United States of America, and in which said corporation the United States of America then and there owned a part of the capital stock; that on or about said 30th day of January, 1946, the said Sterling J. Perry, while then and there acting in his aforesaid capacity as vice-president of said member bank, without authority of the Board of Directors of said member bank and with intent to injure and defraud said member bank, other companies, bodies politic, bodies corporate, and individual persons, the names of all of whom are to the Grand Jurors unknown, and with further intent to deceive the officers of said mem-

ber bank, the Comptroller of the Currency, and any and all agents and examiners appointed to examine the affairs of said member bank, and also the Federal Reserve Board and the Federal Deposit Insurance Corporation, did then and there within the jurisdiction of this Court unlawfully, knowingly, wilfully, and feloniously make and cause to be made a false entry on the general statement of said bank for January 30, 1946, in that said entry, as so made and caused to be made, reflected a balance of forty-three thousand four hundred thirty dollars and nineteen cents (\$43,430.19), whereas, said balance in said remittance account in said bank statement for January 30, 1946, should have been the amount of forty-two thousand one hundred eighty-two dollars and eighty-eight cents (\$42,182.88), all as the defendant then and there well knew at the time he made said false entry and caused the same to be made as aforesaid.

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

#### COUNT IV

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present that:

STERLING J. PERRY,

late of said district, at and in the Evansville Division thereof, was on the 20th day of September, 1945, and for a long time prior thereto had been, an officer, to wit, vice-president, of The National City Bank of Evansville, a national bank theretofore organized and then

existing and doing a banking business at Evansville, in Vanderburgh County, in the State of Indiana, under and pursuant to the laws of the United States, said bank being then and there a member bank of the Federal Reserve Bank of St. Louis, Missouri, Federal Reserve District No. 8, the deposits of which member bank were then and there insured in accordance with the provisions of law by, with, and in the Federal Deposit Insurance Corporation, a corporation theretofore organized and then existing and doing business under and pursuant to the law of the United States of America, and in which said corporation the United States of America then and there owned a part of the capital stock; that on or about said 20th day of September, 1945, the said Sterling J. Perry, while then and there acting in his aforesaid capacity as vice-president of said member bank, without authority of the Board of Directors of said member bank and with intent to injure and defraud said member bank, other companies, bodies politic, bodies corporate, and individual persons, the names of all of whom are to the Grand Jurors unknown, and with further intent to deceive the officers of said member bank, the Comptroller of the Currency, and any and all agents and examiners appointed to examine the affairs of said member bank, and also the Federal Reserve Board and the Federal Deposit Insurance Corporation, did then and there within the jurisdiction of this Court unlawfully, knowingly, wilfully, and feloniously and without authority from the Board of Directors of said member bank, misapply certain of the moneys, funds, and credits of said member bank in the amount of sixty-three thousand



five hundred four dollars and sixty-two cents (\$63,504.62), and of that value, a more particular description of said moneys, funds, and credits being to the Grand Jurors unknown, all with intent to convert said moneys, funds, and credits to his own use and to the use of other persons, companies, and corporations, the names and descriptions of all of which are to the Grand Jurors unknown, in the following manner and by the following means: said defendant, in his aforesaid capacity, did then and there misapply a check in the amount of sixty-three thousand dollars five hundred four dollars and sixty-two cents (\$63,504.62), that date received to the credit of the account of H. R. Randall, special account; whereas, said check should have been credited to the account of Hercules Body Company in and with said bank, as the defendant then and there well knew.

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

#### COUNT V.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present that:

#### STERLING J. PERRY,

late of said district, at and in the Evansville Division thereof, was on the 31st day of July, 1944, and for a long time prior thereto had been, an officer, to wit, vice-president, of The National City Bank of Evansville, a national bank theretofore organized and then existing and doing a banking business at Evansville,



in Vanderburgh County, in the State of Indiana, under and pursuant to the laws of the United States, said bank being then and there a member bank of the Federal Reserve Bank of St. Louis, Missouri, Federal Reserve District No. 8, the deposits of which member bank were then and there insured in accordance with the provisions of law by, with, and in the Federal Deposit Insurance Corporation, a corporation theretofore organized and then existing and doing business under and pursuant to the laws of the United States of America, and in which said corporation the United States of America then and there owned a part of the capital stock; that on or about said 31st day of July 1944, the said Sterling J. Perry, while then and there acting in his aforesaid capacity as vice-president of said member bank, without authority of the Board of Directors of said member bank and with intent to injure and defraud said member bank, other companies, bodies politic, bodies corporate, and individual persons, the names of all of whom are to the Grand Jurors unknown, and with further intent to deceive the officers of said member bank, the Comptroller of the Currency, and any and all agents and examiners appointed to examine the affairs of said member bank, and also the Federal Reserve Board and the Federal Deposit Insurance Corporation, did then and there within the jurisdiction of this Court unlawfully, knowingly, wilfully, and feloniously and without authority from the Board of Directors of said member bank, misapply certain of the moneys, funds, and credits of said member bank in the amount of one hundred twenty thousand dollars (\$120,000.00), and of that value, a more particular

description of said moneys, funds, and credits being to the Grand Jurors unknown, all with intent to convert said moneys, funds, and credits to his own use and to the use of other persons, companies, and corporations, the names and descriptions of all of which are to the Grand Jurors unknown, in the following manner and by the following means: said defendant, in his aforesaid capacity, did then and there misapply a certain one hundred twenty thousand dollar (\$120,000.00) check of Southern Indiana Gas and Electric Company payable to the order of Commonwealth and Southern to be credited to the following accounts and in the following amounts:

Hercules Body Company .....	\$71,487.37
Bristol Hackbush, special account.....	6,500.00
Bristol Hackbus, special account.....	14,512.63
H. R. Randall, special account.....	12,500.00
J. L. Taylor account.....	6,500.00
J. L. Taylor account.....	8,500.00

whereas, said check should have been credited to the account of the Philadelphia National Bank of Philadelphia, Pennsylvania, all as the defendant then and there well knew.

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

## COUNT VI

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present that:

## STERLING J. PERRY,

late of said district, at and in the Evansville Division thereof, was on the 9th day of August, 1944, and for a long time prior thereto had been, an officer, to wit, vice-president, of The National City Bank of Evansville, a national bank theretofore organized and then existing and doing a banking business at Evansville, in Vanderburgh County, in the State of Indiana, under and pursuant to the laws of the United States, said bank being then and there a member bank of the Federal Reserve Bank of St. Louis, Missouri, Federal Reserve District No. 8, the deposits of which member bank were then and there insured in accordance with the provisions of law by, with, and in the Federal Deposit Insurance Corporation, a corporation theretofore organized and then existing and doing business under and pursuant to the laws of the United States of America, and in which said corporation the United States of America then and there owned a part of the capital stock; that on or about said 9th day of August, 1944, the said Sterling J. Perry, while then and there acting in his aforesaid capacity as vice-president of said member bank, without authority of the Board of Directors of said member bank and with intent to injure and defraud said member bank, other companies, bodies politic, bodies corporate, and individual persons, the names of all of whom are to the Grand Jurors unknown, and with further intent to deceive the officers

of said member bank, the Comptroller of the Currency, and any and all agents and examiners appointed to examine the affairs of said member bank, and also the Federal Reserve Board and the Federal Deposit Insurance Corporation, did then and there within the jurisdiction of this Court unlawfully, knowingly, wilfully, and feloniously make and cause to be made a false entry on the general statement of said bank for August 9, 1944, in that said entry, as so made and caused to be made reflected a balance of ninety-eight thousand two hundred seventy-one dollars and forty-nine cents (\$98,271.49) in the remittance account, whereas, in truth and in fact, the balance in said remittance account for said August 9, 1944, should have been seven thousand seven hundred seventy-one dollars and forty-nine cents (\$7,771.49), all as the defendant then and there well knew at the time he made said false entry and caused the same to be made as aforesaid.

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

## COUNT VII

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present that:

### STERLING J. PERRY,

late of said district, at and in the Evansville Division thereof, was on the 29th day of August, 1944, and for a long time prior thereto had been, an officer, to wit, vice-president, of The National City Bank of Evansville, a national bank theretofore organized and then

existing and doing a banking business at Evansville, in Vanderburgh County, in the State of Indiana, under and pursuant to the laws of the United States, said bank being then and there a member bank of the Federal Reserve Bank of St. Louis, Missouri, Federal Reserve District No. 8, the deposits of which member bank were then and there insured in accordance with the provisions of law by, with, and in the Federal Deposit Insurance Corporation, a corporation theretofore organized and then existing and doing business under and pursuant to the laws of the United States of America, and in which said corporation the United States of America then and there owned a part of the capital stock; that on or about said 29th day of August, 1944, the said Sterling J. Perry, while then and there acting in his aforesaid capacity as vice-president of said member bank, without authority of the Board of Directors of said member bank and with intent to injure and defraud said member bank, other companies, bodies politics, bodies corporate, and individual persons, the names of all of whom are to the Grand Jurors unknown, and with further intent to deceive the officers of said member bank, the Comptroller of the Currency, and any and all agents and examiners appointed to examine the affairs of said member bank, and also the Federal Reserve Board and the Federal Deposit Insurance Corporation, did then and there within the jurisdiction of this Court unlawfully, knowingly, wilfully, and feloniously make and cause to be made a false entry on the general statement of said bank of August 29, 1944, in that said entry, as so made and caused to be made reflected a balance of one hundred twenty-one

thousand two hundred eighteen dollars and nineteen cents (\$121,218.19) in the remittance account, whereas, in truth and in fact, the balance in said remittance account for said 29th day of August, 1944, should have been forty-six thousand two hundred eighteen dollars and nineteen cents (\$46,218.19), all as the defendant then and there well knew at the time he made said false entry and caused the same to be made as aforesaid.

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

### COUNT VIII

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present that:

#### STERLING J. PERRY,

late of said district, at and in the Evansville Division thereof, was on the 24th day of February, 1945, and for a long time prior thereto had been, an officer, to wit, vice-president, of The National City Bank of Evansville, a national bank theretofore organized and then existing and doing a banking business at Evansville, in Vanderburgh County, in the State of Indiana, under and pursuant to the laws of the United States, said bank being then and there a member bank of the Federal Reserve Bank of St. Louis, Missouri, Federal Reserve District No. 8, the deposits of which member bank were then and there insured in accordance with the provisions of law by, with, and in the Federal Deposit Insurance Corporation, a corporation theretofore organized and then existing and doing business under

and pursuant to the laws of the United States of America, and in which said corporation the United States of America then and there owned a part of the capital stock; that on or about said 24th day of February, 1945, the said Sterling J. Perry, while then and there acting in his aforesaid capacity as vice-president of said member bank, without authority of the Board of Directors of said member bank and with intent to injure and defraud said member bank, other companies, bodies politic, bodies corporate, and individual persons, the names of all of whom are to the Grand Jurors unknown, and with further intent to deceive the officers of said member bank, the Comptroller of the Currency, and any and all agents and examiners appointed to examine the affairs of said member bank, and also the Federal Reserve Board and the Federal Deposit Insurance Corporation, did then and there within the jurisdiction of this Court unlawfully, knowingly, wilfully, and feloniously and without authority from the Board of Directors of said member bank, misapply certain of the moneys, funds, and credits of said member bank in the amount of one hundred forty-three thousand one hundred twenty-nine dollars and fifty-two cents (\$143,129.52), and of that value, a more particular description of said moneys, funds, and credits being to the Grand Juors unknown, all with intent to convert said moneys, funds, and credits to his own use and to the use of other persons, companies, and corporations, the names and descriptions of all of which are to the Grand Jurors unknown, in the following manner and by the following means: said defendant, in his aforesaid capacity, caused the following accounts



to be credited in the following amounts:

The Ingle Coal Company.....	\$50,000.00
The Hercules Body Company.....	63,900.00
H. R. Randall, special account.....	29,229.52

whereas, in truth and in fact, said one hundred forty-three thousand one hundred twenty-nine dollars and fifty-two cents (\$143,129.52) should have been credited to the account of Indiana National Bank of Indianapolis, at Indianapolis, Indiana, all as the defendant then and there well knew.

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

### COUNT IX

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present that:

#### STERLING J. PERRY,

late of said district, at and in the Evansville Division thereof, was on the 27th day of February, 1945, and for a long time prior thereto had been, an officer, to wit, vice-president, of The National City Bank of Evansville, a national bank theretofore organized and then existing and doing a banking business at Evansville, in Vanderburgh County, in the State of Indiana, under and pursuant to the laws of the United States, said bank being then and there a member bank of the Federal Reserve Bank of St. Louis, Missouri, Federal Reserve District No. 8, the deposits of which member bank were then and there insured in accordance with



the provisions of law, by, with and in the Federal Deposit Insurance Corporation, a corporation theretofore organized and then existing and doing business under and pursuant to the laws of the United States of America, and in which said corporation the United States of America then and there owned a part of the capital stock; that on or about said 27th day of February, 1945, the said Sterling J. Perry, while then and there acting in his aforesaid capacity as vice-president of said member bank, without authority of the Board of Directors of said member bank and with intent to injure and defraud said member bank, other companies, bodies politic, bodies corporate, and individual persons, the names of all of whom are to the Grand Jurors unknown, and with further intent to deceive the officers of said member bank, the Comptroller of the Currency, and any and all agents and examiners appointed to examine the affairs of said member bank, and also the Federal Reserve Board and the Federal Deposit Insurance Corporation, did then and there within the jurisdiction of this Court unlawfully, knowingly, wilfully, and feloniously make and cause to be made a false entry in a book of said member bank then and there of and among the books regularly kept at, in, and by said member bank in the due course of business therein and known as the general ledger on a loose leaf sheet thereof reflecting the deposits and withdrawals of the account of The Hercules Body Company, of Evansville, Indiana, which entry purports to show and in effect does indicate and declare that the said The Hercules Body Company had a balance of only three hundred two thousand nine hundred ninety-six dollars and

eighty-nine cents (\$302,996.89) in said account at the close of business on February 27, 1945, whereas, in truth and in fact, the said The Hercules Body Company had a true balance in said account on said date of four hundred twenty-three thousand nine hundred ninety-six dollars and eighty-nine cents (\$423,996.89), all as the defendant then and there well knew.

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

#### COUNT X

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present that:

#### STERLING J. PERRY,

late of said district, at and in the Evansville Division thereof, was on the 27th day of May, 1946, and for a long time prior thereto had been, an officer, to wit, vice-president, of The National City Bank of Evansville, a national bank theretofore organized and then existing and doing a banking business at Evansville, in Vanderburgh County, in the State of Indiana, under and pursuant to the laws of the United States, said bank being then and there a member bank of the Federal Reserve Bank of St. Louis, Missouri, Federal Reserve District No. 8, the deposits of which member bank were then and there insured in accordance with the provisions of law by, with, and in the Federal Deposit Insurance Corporation, a corporation theretofore organized and then existing and doing

business under and pursuant to the laws of the United States of America, and in which said corporation the United States of America then and there owned a part of the capital stock; that on or about said 27th day of May, 1946, the said Sterling J. Perry, while then and there acting in his aforesaid capacity as vice-president of said member bank, through the power, control, direction, and management which he had and possessed as such vice-president over the moneys, funds, and credits of said member bank, did then and there within the jurisdiction of this Court unlawfully, knowingly, wilfully, feloniously, and with the intent to injure and defraud said member bank and other companies, bodies politic, bodies corporate, and individual persons, the names of all of whom are to the Grand Jurors unknown, embezzle and appropriate to his own use from said member bank certain of the moneys, funds, and credits of said member bank of the value of one hundred forty-two thousand seven hundred sixty-five dollars and thirty-seven cents (\$142,765.37), a more particular description of which said moneys, funds, and credits is to the Grand Jurors unknown, which said moneys, funds, and credits had theretofore come into his possession and under his control by virtue of his aforesaid position with and in said member bank.

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

## COUNT XI

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present that:

STERLING J. PERRY,

late of said district, at and in the Evansville Division thereof, was on the 27th day of May, 1946, and for a long time prior thereto had been, an officer, to wit, vice-president, of The National City Bank of Evansville, a national bank theretofore organized and then existing and doing a banking business at Evansville, in Vanderburgh County, in the State of Indiana, under and pursuant to the laws of the United States, said bank being then and there a member bank of the Federal Reserve Bank of St. Louis, Missouri, Federal Reserve District, No. 8, the deposits of which member bank were then and there insured in accordance with the provisions of law by, with, and in the Federal Deposit Insurance Corporation, a corporation therefore organized and then existing and doing business under and pursuant to the laws of the United States of America, and in which said corporation the United States of America then and there owned a part of the capital stock; that on or about said 27th day of May, 1946, the said Sterling J. Perry, while then and there acting in his aforesaid capacity as vice-president of said member bank, through the power, control, direction, and management which he had and possessed as such vice-president over the moneys, funds, and credits of said member bank, did then and there within the jurisdiction of this Court unlawfully, wilfully, knowingly, feloniously, and with the intent to injure and defraud

said member bank and other companies, bodies politic, bodies corporate, and individual persons, the names of all of whom are to the Grand Jurors unknown, embezzle, abstract, and wilfully misapply certain moneys, funds, and securities in the amount and of the value of one hundred forty-two thousand seven hundred sixty-five dollars and thirty-seven cents (\$142,765.37), which said moneys, funds, and securities had theretofore been entrusted to him, said defendant, in his aforesaid capacity as an agent and employee of The National City Bank of Evansville, a Federal Reserve agent, a more particular description of which said moneys, funds, and securities, is to the Grand Jurors unknown.

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

12 USCA 592.

Signed: B. HOWARD CAUGHRAN,  
B. Howard Caughran  
*United States Attorney.*

ENDORSEMENTS:

No. 8575

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA

.....Division

THE UNITED STATES OF AMERICA

vs.

STERLING J. PERRY

INDICTMENT

Violation of National Bank Act.

Vio. Sec. 592, Title 12, USCA

A true bill,

(signed) George Fred Rieman  
*Forman.*

Filed in open court this 14 day of June, A. D. 1946.

Albert C. Sogemeier, *Clerk*

Bail, \$10,000.00

## CERTIFIED COPY

United States of America    }  
 Southern District of Indiana } ss.

## Indianapolis Division

I, Albert C. Sogemeier, Clerk of the United States District Court in and for the Southern District of Indiana, do hereby certify that the annexed and foregoing is a true and full copy of an indictment returned and filed June 14, 1946, in the cause of United States of America vs. Sterling J. Perry, No. 8575 Criminal now remaining among the records of the said Court in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Indianapolis, this 19th day of September, A. D. 1946.

( S E A L )

(Signed) ALBERT C. SOGEMEIER,  
 Albert C. Sogemeier  
*Clerk.*

By (Signed) DOROTHY G. PHIPPS,  
 Dorothy G. Phipps,  
*Deputy Clerk.*

## APPENDIX B

DISTRICT COURT OF THE UNITED STATES  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA	}	No. 8575 Criminal
vs.		
STERLING J. PERRY		

At Indianapolis in said District on  
the 19th day of June, 1946, before the  
Honorable Robert C. Baltzell, Judge.

Comes now B. Howard Caughran, Esq., Attorney for the United States, and comes also the defendant, Sterling J. Perry, in his own proper person, and it appearing to the Court that the defendant appears in court without counsel, said defendant now states in open court that he has had the assistance and advice of counsel and for the purpose of arraignment desires to waive the presence of his counsel, and that he thoroughly understands the charge against him.

The defendant now being arraigned upon the indictment herein, for plea thereunto, says that he is guilty as charged therein, and said defendant requests that judgment be rendered in the Indianapolis Division of this District.

It is ordered by the Court that this cause be continued for investigation by the Probation Officer of this Court.



DISTRICT COURT OF THE UNITED STATES  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA	}	No. 8575
vs.		Criminal
STERLING J. PERRY		

At Indianapolis, in said District, on  
the 27th day of June, 1946, before the  
Honorable Walter C. Lindley, Judge.

Comes now B. Howard Caughran, Esq., Attorney for the United States, and comes also the defendant, Sterling J. Perry, in his own proper person and by his attorney, Edward E. Meyer, and this cause having been continued for investigation by the Probation Officer of this Court, and the Probation Officer having made his report to the Court, said Attorney for the United States now moves the Court for sentence and judgment upon the plea of guilty heretofore made and entered herein, the defendant having heretofore requested that disposition be made in the Indianapolis Division of this District.

The defendant having been asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court.

It is therefore considered and adjudged by the Court that the defendant, Sterling J. Perry, is guilty of each of the offenses charged in the indictment.

It is further considered and adjudged by the Court that said defendant, Sterling J. Perry, for the offense

charged in Count I of the indictment be committed into the custody of the Attorney General of the United States or his authorized representative for imprisonment and confinement for a period of Five (5) years in an institution to be designated by said Attorney General or his authorized representative.

It is further considered and adjudged by the Court that said defendant, Sterling J. Perry, for the offense charged in Count II of the indictment be committed into the custody of the Attorney General of the United States or his authorized representative for imprisonment and confinement for a period of Five (5) years in an institution to be designated by said Attorney General or his authorized representative, and that said imprisonment of Five (5) years be consecutive and cumulative with and begin at the termination of the sentence imposed on Count I of the indictment.

It is further considered and adjudged by the Court that said defendant, Sterling J. Perry, for the offense charged in Count III of the indictment be committed into the custody of the Attorney General of the United States or his authorized representative for imprisonment and confinement for a period of Five (5) years in an institution to be designated by said Attorney General or his authorized representative, and that said sentence shall be consecutive and cumulative with the sentence imposed herein on Counts I and II and begin at the termination of the sentence on Count II of the indictment.

It is further considered and adjudged by the Court that the said defendant, Sterling J. Perry, pay unto

the United States of America a fine in the sum of Five Thousand Dollars (\$5,000.00) as a part of the judgment on Counts I, II and III of the indictment, and that he be further imprisoned until payment of said fine, or until said defendant is otherwise discharged as provided by law.

It is further considered and adjudged by the Court that the imposition of sentence on each of the Counts IV, V, VI, VII, VIII, IX, X and XI inclusive of the indictment be, and the same is, hereby suspended, and upon the release of the defendant from the service of the sentences hereinbefore imposed upon him, said defendant is to be and remain under the supervision of the Probation Officer of this Court under probation for a period of Three (3) years during the good behavior of said defendant unless the Court otherwise directs.

(Signed) Walter C. Lindley, Judge.

UNITED STATES OF AMERICA  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA	}	No. 8575
vs.		Criminal
STERLING J. PERRY		

WARRANT TO MARSHAL TO DELIVER  
CONVICT TO THE ATTORNEY GENERAL  
OF THE UNITED STATES

*The President of the United States to the Marshal of  
Said District—Greeting:*

WHEREAS, By the judgment of the District Court of the United States, in and for said District, at the May Term thereof, on the 27th day of June, A. D. 1946, STERLING J. PERRY who before, in said Court, had been convicted of record of the crime of Violation of National Bank Act, Section 592, Title 12, USCA, was sentenced therefore to be imprisoned in an institution to be designated by the Attorney General of the United States or his authorized representative for the term of Five (5) Years on Count I; Five (5) Years on Count II; Five (5) Years on Count III, which sentences are to be consecutive and cumulative, and to pay a fine on said Counts I, II and III of Five Thousand Dollars (\$5000.00) and stand committed until said fine is paid or discharged. Imposition of sentence suspended on Counts IV, V, VI, VII, VIII, IX, X and XI of the indictment, and upon release of defendant from service of his sentence, said defendant is to remain under the supervision of the

Probation Officer of this court under probation, for a period of Three (3) Years.

You are, therefore, hereby commanded to deliver the body of said Sterling J. Perry into the custody of the Attorney General of the United States, to undergo the execution of said sentence.

WITNESS, the Honorable Walter C. Lindley, Designated Judge of the District Court of the United States, for the Southern District of Indiana, and the seal of said District Court, this 27th day of June, A. D. 1946.

Albert C. Sogemeier, Clerk.

(SEAL)

### **MARSHAL'S RETURN ON PRISON WARRANT**

The within named, Sterling J. Perry, has been in continuous custody under sentence in the Marion County jail at Indianapolis, Indiana, since June 27, 1946.

(signed) Julius J. Wichser

Julius J. Wichser, U. S. Marshal

Received this writ at Indianapolis, Indiana, on June 28, 1946, and executed same by delivering the within named, Sterling J. Perry, into the custody of the Warden, United States Penitentiary, at Terre Haute, Indiana, together with Certified Copy of Sentence and Judgement, on June 28, 1946.

Julius J. Wichser, U. S. Marshal

By: (signed) Edgar Collins, Deputy

## CERTIFIED COPY

United States of America    }  
Southern District of Indiana } ss.

## Indianapolis Division

I, Albert C. Sogemeier, Clerk of the United States District Court in and for the Southern District of Indiana, do hereby certify that the annexed and foregoing is a true and full copy of an Order made and entered June 19, 1946, Sentence and Judgment made and entered June 27, 1946, and of Prison Warrant issued June 27, 1946 with the Marshall's return endorsed thereon, in the cause of United States of America vs. Sterling J. Perry, No. 8575 Criminal, now remaining among the records of said Court in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Indianapolis this 19th day of January, A. D. 1948.

( S E A L )

(Signed) ALBERT C. SOGEMEIER,  
Albert C. Sogemeier, *Clerk.*

By (Signed) DOROTHY G. PHIPPS,  
Dorothy G. Phipps  
*Deputy Clerk.*

ENDORSEMENT

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA

vs.

STERLING J. PERRY

No. 8575 Criminal

CERTIFIED COPY

of

Order made and entered June 19, 1946

Sentence and Judgment

Prison Warrant